

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL SHANE SHINGLEDECKER,

Defendant-Appellant.

UNPUBLISHED

April 25, 2006

No. 259140

Wayne Circuit Court

LC No. 04-001469-01

Before: Markey, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Defendant, Michael Shane Shingledecker, appeals as of right his jury trial conviction of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(b) (sexual penetration with another person by the use of force or coercion). Defendant was sentenced to 18 months to 15 years' imprisonment for the CSC III conviction. We affirm.

I. FACTS

The conviction of defendant Michael Shane Shingledecker arises out of a sexual incident with Laura Voss (Laura). On December 29, 2003, around 10:00 or 10:30 p.m., Laura, age 17, picked up her friend, Tiffany Jablonski, age 15, and returned to Laura's house where she lives with her parents, Carolyn and Robert Voss. Carolyn and Robert were in Florida at the time. Laura's sister, Nikki Voss, age 20, and her boyfriend, defendant, were at Laura's house when the two girls arrived. Defendant, age 35 at trial, was married while he was dating Nikki.

Laura, Jablonski, Nikki and defendant watched television together. At one point, Laura smacked defendant when he started rubbing her ear. Laura never flirted with defendant in the past. Around 12:00 or 12:30 a.m., Laura and Jablonski went to bed in Laura's room. At this time, Laura was not under the influence of marijuana, although she and Jablonski had smoked earlier that afternoon. Jablonski left the room around 4:00 or 4:30 a.m. and Laura was alone sleeping in her bed which is situated in a corner against the wall.

Defendant entered, Laura awoke when defendant knelt next to her bed and began rubbing her back. Defendant initially talked to Laura about drugs, but then rubbed the side of Laura's breast and licked her neck to which Laura responded, "Yuck." Laura noted this made her uncomfortable. Next, defendant put his hand under Laura's boxer shorts and put his fingers into her vagina. Laura questioned defendant, but defendant persisted and made references to

intercourse. After moving toward the wall, Laura told defendant, “No Shane [defendant]. This is not right.” Laura asked him to stop two to five times. Defendant penetrated Laura for around 30 seconds and continued even after Laura told him to stop. Laura said that this hurt and that she did not try to stop defendant because he was intimidating. Laura’s boxer shorts remained on during this time. Finally, defendant asked Laura, “You really want me to stop, don’t you?” whereupon Laura told defendant to get out. Laura claimed she did not scream and that she could have put up a fight, but had, “...never been in that predicament before so [I] didn’t know what to do.” Laura explained that she was never, nor had she ever, wanted to be romantically involved with defendant.

In contrast to the above version of events, defendant argues that the event was “totally and completely consensual,” as “one thing just led to another...” Defendant denied that he tried to talk Laura into doing anything or that Laura said “No” when he rubbed her back, buttocks, put his hand underneath her shorts, or when he penetrated her.

On July 26, 2004, defendant filed a motion for judgment of acquittal and motion for a new trial arguing that there was insufficient evidence on the issue of force to support a conviction. Alternatively, defendant argued that the conviction was against the great weight of the evidence for the following reasons: his conduct could not be construed a threat, his size and age should not be a factor in determining force or coercion, and that the sexual acts were consensual. On October 4, 2004, the trial court denied defendant’s motion. The trial court reasoned that defendant used force when he “maneuvered his hands into her clothing and thereby seized control of the victim to facilitate the accomplishment of the sexual penetration without regard to the victim’s wishes.”

II. SUFFICIENCY OF EVIDENCE

Defendant first argues on appeal that there was insufficient evidence to support his conviction. We disagree.

A. Standard of Review

When reviewing the claim of insufficient evidence, this Court reviews the record de novo in the light most favorable to the prosecution. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005). The Court does not consider whether any evidence existed that could support a conviction, but rather, must determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

B. Analysis

MCL 750.520d(1)(b) provides that a defendant is guilty of CSC III if “Force or coercion is used to accomplish the sexual penetration. Force or coercion includes but is not limited to any of the circumstances listed in 520b(1)(f)(i) to (v).” The circumstances of force or coercion provided by MCL 750.520b(1)(f) include:

- (i) When the actor overcomes the victim through the actual application of physical force or physical violence.

* * *

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim.

The Supreme Court, in *People v Carlson*, 466 Mich 130, 140; 644 NW2d 704 (2002), clarified the force requirement as follows:

“[F]orce” contemplated in MCL 750.520d(1)(b) does not mean “force” as a matter of mere physics, i.e., the physical interaction that would be inherent in an act of sexual penetration, nor, as we have observed, does it follow that the force must be so great as to overcome the complainant. It must be force to allow the accomplishment of sexual penetration when absent that force the penetration would not have occurred. In other words, the requisite “force” for a violation of MCL 750.520d(1)(b) does not encompass nonviolent physical interaction in a mechanical sense that is merely incidental to an act of sexual penetration. Rather, the prohibited “force” encompasses the use of force against a victim to either induce the victim to submit to sexual penetration or to seize control of the victim in a manner to facilitate the accomplishment of sexual penetration without regard to the victim's wishes.

Applying this explanation of force to the instant case, a review of the record indicates that the jury could find that sufficient evidence existed on the issue of force on the basis of the victim's testimony. Defendant, of his own accord, had to move the victim's boxer shorts to a sufficient degree to put his hands underneath them. In addition, the victim noted that she was moving toward the wall while defendant was touching her.

In light of this testimony, it would be reasonable for the jury to infer that defendant necessarily had to apply force to facilitate penetration because the victim was moving away from him and repeatedly telling him to stop while he placed his hand underneath her boxer shorts and penetrated her. See *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (reasonable inferences arising from circumstantial evidence can “constitute satisfactory proof of the elements of the crime.”) Given that there need not be evidence of actual force to overcome the victim,¹ defendant's actions could support the inference that defendant “induce[d] [the victim] to submit to the penetration” or that he “seize[d] control of the victim” against her wishes. *Carlson, supra* at 140-141.

There was also sufficient evidence to support the inference that defendant overcame the victim by surprise. Victim noted that defendant, who came into the victim's room around 4:00 or 4:30 a.m. while she was sleeping, was like a father or older-brother figure and that she was not uncomfortable when he rubbed her back. However, when defendant began to touch the victim sexually, she reacted by asking him what he was doing and telling him to stop. This is not the

¹ Defendant admits in his brief on appeal that in light of this, he may be guilty.

reaction of someone who expects a certain course of action. Thus, a reasonable jury could infer from these circumstances that defendant initially overcame the victim though surprise.

III. MOTION FOR A NEW TRIAL

Second, defendant argues that the trial court erred in denying his motion for a new trial because the verdict was against the great weight of the evidence. We disagree.

A. Standard of Review

We review a trial court's denial of a defendant's motion for a new trial for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). To find an abuse of discretion, this Court must determine whether the trial court's denial of the motion was manifestly against the clear weight of the evidence. *People v Abraham*, 256 Mich App 265, 269; 662 NW2d 836 (2003). The test is whether "the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 639, 642; 576 NW2d 129 (1998).

B. Analysis

To determine whether the verdict is against the great weight of the evidence, we review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *Lemmon*, *supra* at 625. When the evidence conflicts, the resolution of credibility issues must be left to the jury, even if the testimony is impeached to a certain extent, *Lemmon*, *supra* at 642-643, "unless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or [the testimony] contradicted indisputable physical facts or defied physical realities" *Id.* at 645-646, quoting *Sloan v Kramer-Orloff Co*, 371 Mich 403, 410, 412; 124 NW2d 255 (1963).

In the instant case, the jury's verdict finding defendant guilty of CSC III was not against the great weight of the evidence. We note that the record is replete with conflicting testimony. First, defendant claimed that the victim did not say "No" during the incident, while the victim claimed that she told defendant to stop two to five times and that he continued in spite of this. Defendant also claimed that the victim moved toward him and opened her legs, while the victim claimed she moved against the wall. The victim's sister claimed that the victim was flirtatious with defendant while they were on the couch and that she heard giggling and normal conversation while defendant was in the victim's room. However, the victim noted that she had never flirted with defendant. The victim's sister even explained that the victim had not refused her invitation to participate in a "threesome," although the victim noted that she had refused this invitation.

Even though these versions of events conflict, the victim's testimony was not impeached to the extent that there was no probative value. Furthermore, the victim's testimony has not "contradicted indisputable physical facts or defied physical realities." *Lemmon*, *supra* at 645-646, quoting *Sloan*, *supra* at 412. It should also be noted that during the course of this testimony, the jury was able to observe the demeanor of the witnesses – a factor that can give additional clues of credibility. *Lemmon*, *supra* at 646. In light of the this, a review of the record

indicates that the testimony at trial did not preponderate so heavily against the verdict such that a miscarriage of justice resulted.

Affirmed.

/s/ Jane E. Markey

/s/ Bill Schuette

/s/ Stephen L. Borrello